

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

RONALD NAPIER,

Petitioner,

Case No. C-1-01-511

v.

Judge Spiegel

HAROLD CARTER,

Magistrate Judge Perelman

Respondent.

**RESPONDENT'S SUPPLEMENTAL AUTHORITY IN SUPPORT OF
OBJECTIONS TO MAGISTRATE'S REPORT AND RECOMMENDATION OF
FEBRUARY 26, 2004**

On March 10, 2004, Respondent filed Objections to the Magistrate's Report and Recommendation of February 26, 2004. The specific issue to which the objections were addressed was the Magistrate's failure to find that the third and fourth grounds for relief in Napier's amended habeas petition are time-barred. Napier's original petition, in which he raised two grounds for relief, was timely filed. His third and fourth grounds for relief were raised in his amended petition which was filed after the statute of limitations had expired. Therefore, those grounds for relief are time-barred.

Respondent hereby submits the case of Oleson v. United States, Case No. 00-1938, 27 Fed. Appx. 556, 2001 U.S. App LEXIS 27018 (6th Cir. 2001), copy

attached, as supplemental authority. The Oleson Court agreed that once the statute of limitations has expired, allowing amendment of a habeas petition with additional grounds for relief would defeat the purpose of the AEDPA's statute of limitations. "Finally Oleson's amendment does not escape the AEDPA statute of limitations by 'relating back' to previous claims – Oleson's amendment raises an entirely new argument. See generally FED. R. CIV. P. 15(c); United States v. Thomas, 221 F.3d 430, 436 (3rd Cir. 2000) ('[A] party cannot amend a §2255 petition to add a completely new claim after the statute of limitations has expired.')."

Respectfully submitted,

Jim Petro
Ohio Attorney General

S/Diane Mallory
Diane Mallory (0014867)
Assistant Attorney General
Corrections Litigation Section
150 East Gay Street, 16th Floor
Columbus, Ohio 43215
(614) 644-7233

CERTIFICATE OF SERVICE

I hereby certify that on March 10, 2004, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

S/Diane Mallory